

ESTTA Tracking number: **ESTTA183060**

Filing date: **12/26/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Big Boy Restaurants International LLC		
Entity	Limited Liability Company	Citizenship	Michigan
Address	One Big Boy Drive Warren, MI 48091 UNITED STATES		

Attorney information	Jennifer A. Bourgoin Big Boy Restaurants International LLC One Big Boy Drive Warren, MI 48091 UNITED STATES jbourgoin@bigboy.com, kruehle@bigboy.com Phone:(586) 755-8583
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Applicant Information

Application No	77196584	Publication date	11/27/2007
Opposition Filing Date	12/26/2007	Opposition Period Ends	12/27/2007
Applicant	Bensal, Michael David PO Box 5306 Concord, CA 94524 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 1998/01/01 First Use In Commerce: 2007/01/01 All goods and services in the class are opposed, namely: Tequila
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	944155	Application Date	04/17/1969
Registration Date	10/03/1972	Foreign Priority Date	NONE
Word Mark	BIG BOY		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U045 (International Class 032). First use: First Use: 1938/00/00 First Use In Commerce: 1947/00/00 FLAVORED CARBONATED AND NON-CARBONATED NON-ALCOHOLIC, MALTLESS SOFT DRINKS AND FOUNTAIN SYRUPS FOR MAKING SAME, BOTH FOR USE IN RESTAURANTS
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U.S. Registration No.	913601	Application Date	02/14/1969
Registration Date	06/08/1971	Foreign Priority Date	NONE
Word Mark	BIG BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class U038 (International Class 016). First use: First Use: 1938/00/00 First Use In Commerce: 1947/00/00 PUBLICATIONS-NAMELY, MENUS, GIFT CERTIFICATE BOOKLETS, COMIC BOOKS, HOUSE ORGANS, PRINTED LABELS, SEASON'S GREETING CARDS, PRINTED BUSINESS CARDS, AND COMPANY HISTORY PAMPHLETS</p> <p>Class U046 (International Class 029, 030). First use: First Use: 1938/00/00 First Use In Commerce: 1947/00/00 FOODS AND INGREDIENTS OF FOODS, PARTLY PREPARED, PREPARED, READY-TO-EAT AND FROZEN-NAMELY, SEASONING SALT, HAM, HAMBURGER AND STEAK RELISH, ONION RING DIP MIX, CANNED AND FROZEN SOUPS (BEAN SOUP, CLAM CHOWDER AND CHILI), TOMATO AND SPICE CREAM FRENCH DRESSING, [GARLIC'N-OIL ITALIAN DRESSING, THOUSAND ISLAND DRESSING,] BLEU CHEESE DRESSING, TARTARE SAUCE, SHRIMP AND COCKTAIL SAUCE, MAYONNAISE, STRAWBERRY GLAZE, BREADED CHICKEN, FOUNTAIN SYRUPS FOR USE AS FOOD AND IN MAKING FOOD BEVERAGES, CRACKERS, SUGAR, AND BEEF STRIP LOIN STEAK</p> <p>Class U100 (International Class 042). First use: First Use: 1938/00/00 First Use In Commerce: 1938/00/00 SERVING OF FOODS AND BEVERAGES IN RESTAURANTS</p> <p>Class U101 (International Class 035). First use: First Use: 1952/05/16 First Use In Commerce: 1952/05/16 RENDERING TECHNICAL ASSISTANCE IN THE ESTABLISHMENT AND OPERATION OF RESTAURANTS</p>		

U.S. Registration No.	1753878	Application Date	12/23/1991
Registration Date	02/23/1993	Foreign Priority Date	NONE
Word Mark	BIG BOY RESTAURANT & BAKE SHOP		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 1991/11/01 First Use In Commerce: 1991/11/01 menus, cardboard placards, order forms, stationary, printed business application forms, printed office forms, imprinted paper labels, and instructional material; namely, job description packages</p> <p>Class 042. First use: First Use: 1991/11/01 First Use In Commerce: 1991/11/01</p>		

	restaurant, concession and catering services, preparing and serving food for others
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U.S. Registration No.	1871436	Application Date	12/20/1993
Registration Date	01/03/1995	Foreign Priority Date	NONE
Word Mark	BIG BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1952/00/00 First Use In Commerce: 1952/00/00 toy action figures, action skill games, golf balls, toys banks, dolls, stuffed toys and yo-yos		

U.S. Registration No.	1818909	Application Date	10/14/1992
Registration Date	02/01/1994	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 paper and paper articles; namely, placemats; cardboard and cardboard articles; namely, placards, menus; printed matter; namely, imprinted paper labels, printed application forms, printed office forms; newspaper, containing company and employee information; magazines, containing employee information, employee guidelines, franchise information brochure; books; namely, food and franchise manual; bookbinding material; namely, folders; photographs; stationery; namely, envelopes, letterhead, notepads; adhesive materials; namely, address labels and stickers; artists, materials; namely, paint brushes; instructional and teaching material; namely, management training sheets, employee training sheets, manuals; namely, food, franchise and service instructional seminars; playing cards; printers' type and cliches (stereotype), all distributed to franchisees</p> <p>Class 029. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 meats, fish, poultry, seafood and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, preserves, eggs, milk and other dairy products (excluding ice milk, ice cream, and frozen yogurt); edible oils and fats; pickles; non-dairy whipped toppings, fruit toppings, and nut toppings; salads and salad dressings; soups; potatoes; namely, French fries, instant mash potatoes</p> <p>Class 030. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; namely, oatmeal; bread, biscuits, cakes, pastries and confectionery; namely, sticky buns, cinnamon rolls, sugar cookies, chocolate chip cookies, oatmeal raisin cookies; fruit ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar; maple syrup; syrup toppings; namely, strawberry, chocolate; sauces; namely, spaghetti, tartar, tomato, chili; spices; pies; namely, fruit filled; frozen yogurt; mixes for baking products; namely, pancake mix, corn bread, hush puppies; milkshakes; chocolate based fillings</p> <p>Class 032. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 nonalcoholic drinks; namely, lemonade, orange juice; syrups for making soft</p>		

	drinks; beer, wine Class 042. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 restaurant; food concession stands and catering services; preparing and serving food for others
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U.S. Registration No.	1823393	Application Date	04/12/1993
Registration Date	02/22/1994	Foreign Priority Date	NONE
Word Mark	BIG BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1947/00/00 First Use In Commerce: 1947/00/00 restaurants; catering; concession stands featuring food and souvenirs		

U.S. Registration No.	935453	Application Date	06/29/1971
Registration Date	06/06/1972	Foreign Priority Date	NONE
Word Mark	BIG BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 029, 030, 032). First use: First Use: 1970/11/00 First Use In Commerce: 1970/11/00 PREPARED, READY TO EAT FOODS AND INGREDIENTS OF FOODS- NAMELY, SANDWICHES, PANCAKES, SALADS, CHILI, CHILI AND BEANS, SPAGHETTI, TAMALES, FRENCH FRIED POTATOES, FRIED ONION RINGS, SOUP, GROUND BEEF, HAM, FRIED CHICKEN, FRIED SHRIMP, FISH STICKS, BACON, SAUSAGES, EGGS, COTTAGE CHEESE, MILK SHAKES, SUNDAES, FRUIT PIES, PIE A LA MODE, CREAM PIES, COFFEE, HOT CHOCOLATE, SWEET MILK, BUTTERMILK, TEA, AND FRUIT JUICES		

U.S. Registration No.	2059156	Application Date	04/26/1996
Registration Date	05/06/1997	Foreign Priority Date	NONE
Word Mark	BIG BOY DINER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1990/11/23 First Use In Commerce: 1990/11/23 restaurant services including carry-out, concession and catering services, preparing and serving food others		

U.S. Registration No.	2090105	Application Date	04/26/1996
Registration Date	08/19/1997	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1970/11/00 First Use In Commerce: 1970/11/00 restaurant services including carry-out, concession and catering services, preparing and serving food for others

U.S. Registration No.	1806061	Application Date	12/03/1992
Registration Date	11/23/1993	Foreign Priority Date	NONE
Word Mark	BIG BOY RESTAURANT & BAKERY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1992/08/01 First Use In Commerce: 1992/08/01 menus, cardboard placards, order forms, stationary, printed business application forms, printed office forms, imprinted paper labels, and instructional material; namely, job description packages Class 042. First use: First Use: 1992/08/01 First Use In Commerce: 1992/08/01 restaurant, concession and catering services, preparing and serving food for others		

U.S. Registration No.	2442108	Application Date	09/10/1999
Registration Date	04/10/2001	Foreign Priority Date	NONE
Word Mark	BIG BOY RESTAURANT & MARKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 Menus, Cardboard Placards, Order Forms, Stationery, printed Business Application Forms, Printed Office Forms, Imprinted Paper Labels, and Instructional material, namely Job Description Packages Class 042. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 Restaurants, Concession and Catering Services, Preparing and Serving Food for Others		

U.S. Registration No.	1230170	Application Date	09/11/1981
Registration Date	03/08/1983	Foreign Priority Date	NONE
Word Mark	BOB'S BIG BOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1938/00/00 First Use In Commerce: 1947/00/00 Hamburger Sandwiches, for Consumption On or Off the Premises Class 042. First use: First Use: 1938/00/00 First Use In Commerce: 1947/00/00		

	Restaurant Services		
U.S. Registration No.	1230569	Application Date	10/30/1981
Registration Date	03/08/1983	Foreign Priority Date	NONE
Word Mark	BOB'S BIG BOY FAMILY RESTAURANTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00 Restaurant Services		

U.S. Registration No.	1230570	Application Date	10/30/1981
Registration Date	03/08/1983	Foreign Priority Date	NONE
Word Mark	BOB'S BIG BOY RESTAURANTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1938/00/00 First Use In Commerce: 1938/00/00 Restaurant Services		

Attachments	74233149#TMSN.gif (1 page)(bytes) 74471440#TMSN.gif (1 page)(bytes) 74322107#TMSN.gif (1 page)(bytes) 74378161#TMSN.gif (1 page)(bytes) 72396082#TMSN.gif (1 page)(bytes) 75094645#TMSN.gif (1 page)(bytes) 75094639#TMSN.gif (1 page)(bytes) 74336600#TMSN.gif (1 page)(bytes) 75796293#TMSN.gif (1 page)(bytes) 73334791#TMSN.gif (1 page)(bytes) 73334792#TMSN.gif (1 page)(bytes) Opposition - Big Boy Tequila.pdf (4 pages)(127260 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jenniferabourgoin/
Name	Jennifer A. Bourgoin
Date	12/26/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. SN77-196,584

Filed: June 4, 2007

For the mark: "Big Boy Tequila"

Published in the Official Gazette on November 27, 2007

BIG BOY RESTAURANTS INTERNATIONAL LLC

Opposer,

vs.

MICHAEL DAVID BENSAL,

Applicant.

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NOTICE OF OPPOSITION TO PROPOSED USE OF TRADEMARK

Big Boy Restaurants International LLC ("Opposer"), pursuant to U.S.C.A., Title 15 §1063, states the following in support of its Opposition to Proposed Use:

1. Opposer is a Michigan limited liability company located at One Big Boy Drive, Warren, Michigan 48091.
2. Michael David Bensal ("Applicant") has applied for the registration and use of the trademark "Big Boy Tequila" listed as Item No. SN77-196, 584, of the Official Gazette of the United States Patent and Trademark Office, dated November 27, 2007.
3. Applicant has filed for registration in Int. Cl. 33, Tequila.
4. Applicant's proposed use of the "Big Boy Tequila" trademark is confusingly similar to or likely to be confused with Opposer's numerous "BIG BOY" trademarks.
5. Opposer filed Affidavits of Current Use and Incontestability pursuant to §8 of the Trademark Statute and 37 C.F.R. §§2.161-2-166 and §15 of the Trademark Statute and 37 C.F.R.

§§2016702.168 respectively, which were acknowledged according to the attached Exhibit A. Opposer will file its renewal for all Registrations on a timely basis.

6. Since its first use in 1937, the “BIG BOY” trademarks have been prevalent and continuous and their ubiquitous use has made them well-known to the public.

7. In connection with Opposer’s operation and promotion of its restaurant business, both in the United States and internationally, Opposer employs one or more of its federally-registered “BIG BOY” trademarks. For Opposer, the “BIG BOY” trademark is its single most identifying mark as to the quality and origin of goods and services it offers to the consuming public.

8. If Applicant is allowed to register and use the “Big Boy Tequila” name as proposed, Opposer will be damaged by Applicant’s use of this confusingly similar trademark in connection with metal motorcycle ramps.

9. If Applicant is allowed to register and use the “Big Boy Tequila” name as proposed, Opposer’s numerous “BIG BOY” marks will be diluted by Applicant’s use of this trademark.

10. The consuming public will likely be confused or deceived by Applicant’s use of “Big Boy Tequila” since Opposer promotes its “BIG BOY” services, in the same region of the United States as the Applicant.

11. Applicant will achieve an unfair competitive advantage by appropriating the goodwill established by Opposer’s use of the “Big Boy Tequila” mark.

12. Opposer, having used its “BIG BOY” trademarks in commerce as early as 1937, does not wish to mislead the consuming public that Opposer is part of the services which are used in connection with Applicant, nor does Opposer wish to be adversely affected by any loss of goodwill which may incur as a result of Applicant’s use of the “Big Boy Tequila” trademark.

13. Applicant's use of the trademark "Big Boy Tequila" infringes upon Opposer's first use of its "BIG BOY" trademarks and upon the goodwill associated with those trademarks, to the latter's damages.

14. Opposer has never abandoned use of the "BIG BOY" trademarks.

Accordingly, Opposer requests that this Office refuse Applicant's proposed use and registration of the trademark "Big Boy Tequila."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Bourgoyn", with a horizontal line underneath.

Jennifer A. Bourgoyn, Opposer
Vice President and General Counsel
Big Boy Restaurants International LLC
One Big Boy Drive
Warren, MI 48091
(586) 755-8583

Dated: December 20, 2007

UNITED STATES TRADEMARKS REGISTERED

NAME	REG. NO.	USE CLASSIFICATION
Running "Big Boy"	1,806,061	Int. Cl. 16 Int. Cl. 42
Running "Big Boy"	1,753,878	Int. Cl. 16 Int. Cl. 42
Running "Big Boy"	1,871,436	Int. Cl. 28
Running "Big Boy" (Design only)	1,818,909	Int. Cl. 16 Int. Cl. 29 Int. Cl. 30 Int. Cl. 32 Int. Cl. 42
Standing "Big Boy"	910,758	Int. Cl. 42
"Big Boy" (words only)	1,823,393	Int. Cl. 42
"Big Boy"	913,601	Int. Cl. 16 Int. Cl. 29 Int. Cl. 30 Int. Cl. 35 Int. Cl. 42
Running "Big Boy" w/burger design	935,453	Int. Cl. 29 Int. Cl. 30 Int. Cl. 32
"Big Boy"	944,155	Int. Cl. 32
"Big Boy Diner"	2,059,156	Int. Cl. 42
Running Big Boy with Burger	2,090,105	Int. Cl. 42
Original Big Boy	2,145,671	Int. Cl. 25 Int. Cl. 28 Int. Cl. 42
'Big Boy Restaurant and Market'	2,442,108	Int. Cl. 16 Int. Cl. 42
Standing "Big Boy"	1,166,686	Int. Cl. 29
"Bob's Big Boy"	1,230,170	Int. Cl. 30 Int. Cl. 42
"Bob's Big Boy Family Restaurants" (and design)	1,230,569	Int. Cl. 42
"Bob's Big Boy Restaurants" (and design)	1,230,570	Int. Cl. 42